

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

VU NGUYEN,

Defendant.

Case No. 2:03-CR-00158-KJD-PAL

ORDER

Presently before the Court is Defendant's Motion for Compassionate Release (#263). The Government filed a response in opposition (#264/265/266) to which Defendant replied (#267). Defendant also filed a Supplement (#268).

I. Background

On September 16, 1999, Defendant and co-conspirator, Anh The Duong, robbed a jewelry store in Las Vegas, Nevada. Duong was armed with an assault style rifle. As they approached the jewelry store, security guard Kenneth Bailey was washing the windows. With no warning, Duong shot Bailey in the back killing him. Defendant then entered the store, threatened the employees, made them unlock display cases containing expensive watches and then fled with approximately \$885,000.00 in watches.

On February 10, 2005, a jury convicted Defendant of three counts of a superseding indictment: one count of conspiracy to interfere with commerce, one count of interference with commerce by violence, and one count of carrying or using a firearm during a crime of violence, resulting in death. On May 6, 2005, Defendant was sentenced to sixty-three (63) months each, on Count 1 and 2 to be served concurrently and 293 months on Count Three to be served consecutively to Counts 1 and 2.

1 Having committed these crimes at age 31, Defendant is now fifty-two (52) years old. He
 2 has significant health issues: primarily lung cancer treatment that required the removal of 1/3 of
 3 his right lung in 2019, followed by chemotherapy. Defendant was due to have a follow-up pet
 4 scan to determine whether the cancer was clear. He also has high blood pressure and high
 5 cholesterol. While Defendant had been detained at FCI Oakdale, he has now been transferred to
 6 CI Reeves III in Texas which is reporting no cases of inmate or staff infection.¹

7 II. Standard

8 The district court that imposed sentence on a criminal defendant has authority to modify
 9 the term of imprisonment under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), as
 10 amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018).

11 That statute provides, in relevant part:

12 [T]he court, upon motion of the Director of the Bureau of Prisons,
 13 or upon motion of the defendant after the defendant has fully
 14 exhausted all administrative rights to appeal a failure of the Bureau
 15 of Prisons to bring a motion on the defendant's behalf or the lapse of
 16 30 days from the receipt of such a request by the warden of the
 17 defendant's facility, whichever is earlier, may reduce the term of
 18 imprisonment (and may impose a term of probation or supervised
 19 release with or without conditions that does not exceed the unserved
 portion of the original term of imprisonment), after considering the
 factors set forth in section 3553(a) to the extent that they are
 applicable, if it finds that [...] extraordinary and compelling reasons
 warrant such a reduction [...] and that such a reduction is consistent
 with applicable policy statements issued by the Sentencing
 Commission[.]

20 18 U.S.C. §§ 3582(c)(1)(A), 3582(c)(1)(A)(i).

21 If the defendant has exhausted administrative remedies, the analysis is twofold. First, the
 22 Court must consider the same factors applicable at the original sentencing, enumerated in 18
 23 U.S.C. § 3553(a), to the extent they remain applicable at the time the motion is brought. 18
 24 U.S.C. § 3582(c)(1)(A). Second, the Court must find “extraordinary and compelling reasons” to
 25 release a defendant from Bureau of Prisons (“BOP”) custody in a policy statement. Id.

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28 ¹ See Bureau of Prisons (BOP), COVID-19 Cases (updated daily) (last accessed February 1, 2021).

1 III. Analysis

2 While the Court does not disagree with the Government or Defendant that it could find
3 extraordinary and compelling reasons based on Defendant's health, the Court cannot find that the
4 factors set forth in 18 U.S.C. § 3553 counsel in favor of sentencing Defendant to time served.
5 Those factors include the nature and circumstances of the offense, the need for the sentence
6 imposed, the kinds of sentences available and sentencing ranges established in the guidelines,
7 pertinent policy statements, the need to avoid unwarranted sentence disparities, and the need to
8 provide restitution. 18 U.S.C. § 3553(a). The Court considered these factors on the day of
9 sentencing and finds that they warrant the sentence as it stands today.

10 The Court must also consider the Sentencing Guidelines policy statement that before
11 reducing a term of imprisonment that "defendant is not a danger to the safety of any other person
12 or the community, as provided in 18 U.S.C. § 3142(g)[.]" Defendant has not met his burden to
13 show he is not a danger to the community. In considering dangerousness, the Court is guided by
14 the sentencing factor focused on "the need for the sentence imposed ... to protect the public from
15 further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(C). The robbery conducted by
16 Defendant is one of the coldest and most violent offenses the Court has considered in its twenty
17 (20) years. Defendant has only shown remorse when there was a direct benefit tied to that
18 expression. He spent most of his time after committing the crime through his direct appeal
19 denying having participated in the crime at all. Only after all other appeals had failed did
20 Defendant admit culpability and he only did that, so that he could pursue an ineffective
21 assistance of counsel claim against his excellent and committed trial counsel. Defendant's
22 protestations of remorse and commitment to a crime-free life stand in a stark contrast to how he
23 lived his life before his trial and during his appeals.

24 The only thing that freed Defendant of his association with criminal organizations and
25 criminal leaders, such as Anh The Duong, was prison. Admittedly, Defendant was able to avoid
26 serious prison sentences before the murder, which led the Government to move for upward
27 departure based on underrepresentation of his criminal history. Defendant received significant
28 consideration from the Court when he was sentenced to 293 months rather than life. Cutting

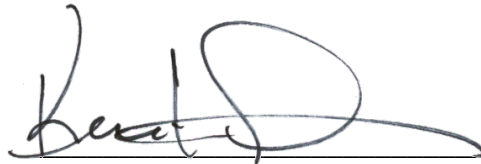
1 Defendant's sentence short before he has served his full sentence would undermine the statutory
2 factors: particularly the need for the sentence to reflect the seriousness of the offense, to promote
3 respect for the law, to provide just punishment and to protect the public from further crimes of
4 Defendant.

5 Further, release would provide little actual benefit to Defendant who has an immigration
6 detainer pending. He would be released to ICE custody pending resolution of the announced
7 intent to deport him. Merely releasing him from BOP custody to ICE custody would undermine
8 the intent of the First Step Act, CARES Act, and § 3582(c). Accordingly, the Court denies
9 Defendant's motion for compassionate release.

10 IV. Conclusion

11 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Compassionate
12 Release (#263) is **DENIED**.

13 Dated this 2nd day of February 2021.

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16 Kent J. Dawson
17 United States District Judge
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